IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 10TH NOVEMBER 2006 / 19TH KARTHIKA 1928

WA.No. 2108 of 2000(A)

AGAINST THE JUDGEMENT IN OP.623/2000 Dated 17/08/2000

APPELLANT: 3RD RESPONDENT

ELAMGULAM SERVICE CO-OPERATIVE BANK LTD., NO. 3576,
REPRESENTED BY ITS SECRETARY-IN-CHARGE, KOORALI P.O.
PONKUNNAM.

BY ADV. SRI.R.RENJITH

RESPONDENTS: PETITIONERS 1 & 2 & RESPONDENTS 1 & 2.

1. M. GOPINATHANNAIR,MULAMKUNNATH URUMPIL,
KOORALI P.O., PONKUNNAM.

2. GEOGI JOSE, KUZHIPPALLIL, NISSI BHAVAN, DO. DO.

3. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,
KOTTAYAM.

4. THE ADMINISTRATOR, ELAMGULAM SERVICE
CO-OPERATIVE BANK LTD., NO.3576, KOORALI P.O.
PONKUNNAM.

BY ADV. SRI.K.BALAKRISHNAN
GOVERNMENT PLEADER SRI. M.R. SABU.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10/11/2006,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.K. Bali, C.J & S. Siri Jagan, J.

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W.A. No. 2108 of 2000

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Dated this, the 10th November, 2006.

J U D G M E N T

Siri Jagan, J.

The Elamgulam Service Co-operative Bank, the 3rd respondent in O.P.No. 623 of 2000 is the appellant herein. The original petition was filed by respondents 1 and 2, two employees of the Bank, challenging disciplinary proceedings against them whereby by Ext. P3 notice, the administrator, who is in management of the Bank, called upon those employees to offer their comments on the enquiry report submitted by the enquiry officer, who conducted the enquiry into the charges of misconduct levelled against the employees as a prelude to imposition of penalty on the respondents 1 and 2.

2. Relying on certain decisions of this Court, namely, President, Pudupariyaram Service Co-op. Society v. Rugmini Amma & others, [1996 (1) KLT 100], Mr. Achamma Cyriac v. K.F.C & others, [1996 (1) KLJ 756] and Kunhammed v. Joint Registrar of Co-op. Societies, [1998 (1) KLT 60] and Rugmini Amma's case (supra) in particular, the learned Single Judge accepted the contention of respondents 1 and 2 that if the first decision on the punishment is taken by the Board of Management for imposing a major penalty, the appeal provided under Rule 198(4) of the Kerala Co-operative Societies Rules will become otiose and that unless a sub committee is formed to take the initial decision regarding imposition of punishment, the position would be that the delinquent would lose the right of appeal before the Board. On the assumption that by Ext. P3 notice, the administrator is discharging the functions of the Board of Management, the learned Single Judge held that if he takes a decision, that would affect the right of appeal of the delinquent employees in respect of the disciplinary proceedings . On that premise, the learned Single Judge quashed Ext. P3 issued to the 1st respondent and similar notice issued

to the 2nd respondent and directed that final decision on the disciplinary proceedings should be deferred until election is held in the Society and the Committee which comes into office constitutes a sub committee to deal with the matter. This judgment is under challenge at the instance of the Bank in this writ appeal.

3. We have heard counsel on both sides in detail.

4. Although more than six years have elapsed since the impugned judgment, counsel for the appellant submits that the Bank is still under the management of the Administrator and no election has been held to the Board of Management.

5. One of us (S. Siri Jagan, J) recently had occasion to decide identical question in the decision of Mary v. Kuzhur Service Co-op. Bank Ltd., reported in 2006(1) KLT 323. In that decision, drawing support from paragraph 6 of the decision of the Supreme Court in Joint Registrar of Co-operative Societies v. T.A. Kuttappan [2002 (2) KLT 480], it was held as follows in paragraphs 9 to 11:

> "9. As is clear from the above decision, it is the duty of the administrator to take such action as is necessary to enable the Society to carry on its functions as enjoined by law so as "to bring on an even keel a ship which was in doldrums", as the Supreme Court puts it. For this, it is imperative that there is discipline among the employees of the Society. If the administrator cannot take disciplinary action, how can he maintain discipline? If discipline is not maintained, how can he bring the ship in doldrums on an even keel? If the employees are aware that in law, the administrator cannot take disciplinary action against them we need not go too far to draw the conclusion that the casualty would be discipline. I am also unable to accept the contention of the counsel for the petitioner that the administrator could have continued the petitioner under suspension till an elected committee takes charge, leaving it to the new elected committee to take further action in accordance with law. This would be a contradiction in terms also since continuing the petitioner under suspension is part of the

> disciplinary proceedings . Further, there is no reason why the Society should lose its good money on subsistence allowance payable to the petitioner. Therefore, I have no doubt in my mind that the object of Ss. 32 and 33 cannot be put into practice unless the administrator is invested with the powers to enforce discipline among the employees of the Society one way of doing which is to take disciplinary action against them. As such, the administrator as of necessity should have jurisdiction to impose punishment on employees.
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> 10. Further, it cannot certainly be doubted that the function of the administrator is to see that the day-to-day functions of the Society go on smoothly. Enforcing discipline against employees and taking disciplinary action against erring employees are certainly day-to-day functions of the Society, which functions come squarely within the ambit of the term 'functions' obtaining in Ss.32(4) and 33(2) of the Act. Therefore, it goes without saying that such functions cannot be denied to the administrator as nobody can deny to the administrator jurisdiction to do day-to-day functions of the Society.
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> 11. Once the power to impose punishments on the employees is conceded to the administrator, the facts that under R.198, the Sub-committee is the disciplinary authority and the petitioner has a right of appeal to the Managing Committee lose all relevance. By virtue of S. 32, the administrator becomes the President, Sub Committee and Managing Committee all rolled into one. Therefore, all the functions to be exercised by the various authorities contemplated in Rule 198 vests with one authority, namely, the administrator. Such authority cannot be denied to the administrator simply because the petitioner would lose a right of appeal. Even a construction to the effect that when the administrator is in position, the right of appeal under R. 198 stands suspended, is not out of place in the scheme of things as envisaged under law.

6. Further, applying the 'doctrine of necessity' as elucidated in the Supreme Court decisions in Election Commission of India & another v. Dr. Subramanyam Swamy & another, [(1994) 4 SCC 104] and J. Mohapatra & Co. and another v. State of Orissa & another, [(1984) 4 SCC 103, it was held thus in the said decision.

> "12. In any event, this is a situation where the doctrine of necessity has to be necessarily applied, although the said doctrine is generally invoked in the context of violation of principles of natural justice, especially bias. This doctrine permits certain judicial, quasi-judicial and administrative actions to be done as a matter of necessity even though in the ordinary circumstances such action would have been held as improper or invalid. . . . . .
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> 13. . . . . I am of opinion that the doctrine of necessity as explained in these two decisions squarely applies to the situation at hand. On the appointment of the administrator, the functions of the President, Sub Committee and Managing Committee contemplated under the Co-operative Societies Act vest in the administrator alone. Without exercising these functions himself, Society cannot carry on its business effectively, which is the sole object of appointment of the administrator, itself, unlike enrolment of new members to the Society which can certainly wait till an elected body takes charge without affecting the functions of the Society. Therefore, the facts that under the Rules, Sub Committee is the disciplinary authority over whose decision the petitioner has a right of appeal which has been denied to the petitioner by the administrator by the imposing the punishment, cannot affect the validity of the order of punishment imposed by the administrator ex necessitate. Hence, I hold that the administrator had jurisdiction to impose punishment on the petitioner and the challenge against the order on the two grounds raised by the petitioner is not sustainable in law."

7. We are in perfect agreement with the said decision as laying down the correct law on the subject, which covers all the contentions raised in this case. The facts in the present case are almost identical to the facts in the case referred to above, except that in that case, punishment had already been imposed and this case is at the stage of notice inviting comments on the enquiry report. Applying the ratio of that decision, we cannot but set aside the judgment of the learned Single Judge in this case. We do so.

8. The result is that now the administrator would be free to continue the proceedings initiated against respondents 1 and 2 by

Ext. P3 and identical notice. The administrator shall now give time to respondents 1 and 2 to furnish their comments on the enquiry report and take the disciplinary proceedings to its logical end as expeditiously as possible.

The writ appeal is allowed as above.

V.K. Bali, Chief Justice.

S. Siri Jagan, Judge.

Tds/

V.K. Bali, C.J & S. Siri Jagan, J.

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W.A. No. 2108 of 2000

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J U D G M E N T

10th November, 2006.